Remarks

Claims 1-19 remain pending in this application for consideration. Independent claim 9 (and dependent claims 10 and 14) have been amended to require that the DNS server is operable to provide the message to the relay server when the messaging server is inoperable such that the message is undeliverable to the messaging server (discussed further below with respect to the rejections under 35 U.S.C § 103). In addition, claims 10, 12 and 15 have amended to correct minor typographical errors in the original claims.

Drawing Objections

The Appendix attached hereto includes replacement drawing sheets for FIGS. 1-3, as requested by the Examiner.

Claim Objections

The Examiner objected to claims 9 and 12 on the basis that the word "operably" should be "operable" in such claims. Applicant respectfully submits that the adverb "operably" has been properly used to modify the verb "connected" in such claims. As such, no amendment is required.

Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 1-19 under 35 U.S.C § 103, and Applicant respectfully traverses this rejection and requests reconsideration for the reasons discussed below.

The present invention is directed to a method and network for providing a reliable messaging service, such as that used for routing e-mails between computers over the Internet. As shown in FIG. 1 of the application, the network 10 includes a Domain Name System (DNS) server 12 operably connected to a messaging server 14 and a relay server 16. In operation, the DNS server 12 routes a message to the messaging server 14. When the message is undeliverable

5

to the messaging server 14 (e.g., when the messaging server 14 is inoperable), the DNS server 12 provides the message to the relay server 16. Preferably, the relay server 16 periodically attempts delivery of the message to the messaging server 14. Then, when the messaging server 14 is operational, the relay server 16 re-routes the message from the relay server 16 to the message server 14.

McDowell and Medard

The Examiner rejected claims 1-4, 7-12 and 15-19 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,438,583 to McDowell et al. ("McDowell") in view of U.S. Patent No. 6,047,331 to Medard et al. ("Medard"). The Patent Office's burden of establishing a prima facie case of obviousness is not met unless "'the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.'" In re Bell, 26 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1993)(quoting In re Rinehart, 189 U.S.P.Q. 143,147 (C.C.P.A. 1976)). In this case, Applicant respectfully submits that a prima facie case of obviousness for rejecting these claims has not been established because the cited references clearly do not disclose or suggest Applicant's claimed invention.

McDowell discloses a system and method that addresses the problems that occur when a user switches from one Internet Service Provider (ISP) to another and does not notify others of his/her new e-mail address. In one embodiment, the new e-mail address is provided to the old ISP such that the old ISP can forward the user's e-mail directly to the new ISP (McDowell: col. 3, line 64 to col. 4, line 8; col. 6, line 52 to col. 7, line 49). In various other embodiments, the old ISP forwards the user's e-mail to a re-route server that causes the e-mail to be sent to the new ISP (McDowell: col. 4, line 9 to col. 6, line 47; col. 8, line 14 to col. 13, line 41).

Medard discloses a method and apparatus for implementing automatic protection

switching in communication or power networks. As shown in Fig. 1 of Medard, the network

includes a plurality of nodes 12a-12e that are connected to each other via a plurality of links 20a-

20h (Medard: col. 9, lines 18-43). Each of the nodes 12a-12e includes a routing table 16 that

stores a primary path and a secondary path for each source node/destination node pair in the

network (Medard: col. 9, line 44 to col. 10, line 18). In operation, if a link or a node in a

primary path fails, then signals will automatically be re-routed from the source node to the

destination node over the secondary path (Medard: col. 10, lines 19-41).

As recognized by the Examiner in his analysis of independent claims 1 and 9,

McDowell does not disclose the step of re-routing the message from the relay server to the

messaging server when the messaging server is operational, as required by claims 1-4, 7-12 and

15-19. The Examiner argues that Medard discloses this missing limitation, but it does not.

Medard discloses re-routing signals from a source node to a destination node over a secondary

path if a link or a node in a primary path fails. Medard does not disclose or suggest re-routing

signals from a relay server to a messaging signal when the messaging server is operational.

Thus, the Examiner's analysis misses the mark.

Clearly, if the teachings of McDowell and Medard were combined, the result

would be a system that forwards a user's e-mail from an old ISP to a new ISP (as taught by

McDowell) over a network that uses automatic protection switching (as taught by Medard). This

combination would not, however, result in routing a message to a messaging server, providing

the message to a relay server when the message is undeliverable to the messaging server, and

then re-routing the message from the relay server to the messaging server when the messaging

server is operational. In fact, the combination teaches against this limitation in that the primary

purpose behind the McDowell system is to forward e-mail from an old ISP to a new ISP (not back to the old ISP). Thus, claims 1-4, 7-12 and 15-19 are clearly distinguishable from McDowell and Medard.

Furthermore, independent claim 9 (and thus dependent claims 10-12 and 15-19) as amended includes the additional limitation that the DNS server is operable to provide the message to the relay server when the messaging server is inoperable such that the message is undeliverable to the messaging server. Neither McDowell nor Medard disclose or suggest this limitation. For example, the McDowell system forwards a user's e-mail from an old ISP to a new ISP when the user's old IP address is no longer active (not when the server of the old ISP is inoperable). Likewise, Medard does not disclose the re-routing of signals to a different node when the destination node is inoperable. Rather, Medard merely discloses the routing of signals over a secondary path to the destination node if a link or a node in the primary path fails. Thus, claims 9, 10-12 and 15-19 are even further distinguishable from McDowell and Medard.

Because the Examiner has failed to meet his burden of establishing a prima facie case of obviousness, Applicant respectfully requests that claims 1-4, 7-12 and 15-19 be allowed.

McDowell, Medard and Doshi

The Examiner also rejected dependent claims 5-6 and 13-14 (which depend from independent claims 1 and 9, respectively) under 35 U.S.C. § 103 as being obvious over McDowell in view of Medard, and further in view of U.S. Patent No. 6,182,224 to Doshi et al. These dependent claims incorporate all of the limitations of the independent claims from which they depend. Thus, for the reasons discussed above with respect to independent claims 1 and 9, Applicant respectfully requests that claims 5-6 and 13-14 be allowed.

*   *   *   *   *

In view of the foregoing amendments and remarks, it is respectfully submitted that the claims are now in condition for allowance and eventual issuance, and such action is respectfully requested. Should the Examiner have any further questions or comments that need be addressed in order to obtain allowance, he is invited to contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

By: *Judith L. Carlson*

Judith L. Carlson, Reg. No. 41,904
STINSON MORRISON HECKER LLP
1201 Walnut, Suite 2800
Kansas City, MO 64106-2150
Telephone: (816) 842-8600
Facsimile: (816) 691-3495